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A

LETTER

TO

WILLIAM JONES, ESQ.

MARSHAL OF THE KING'S BENCH PRISON,

OCCASIONED BY HIS

OBSERVATIONS

ON

THE INSOLVENT DEBTORS' ACT,

FROM

HENRY DANCE,

PROVISIONAL ASSIGNEE OF INSOLVENT DEBTORS IN
ENGLAND.

LONDON:

J. RIDGWAY, PICCADILLY.

1827.

Price One Shilling.



A LETTER,

&c. &c.

SIR,

THE observations which you have thought proper to publish on the Insolvent Debtors' Act, contain among other things matter affecting me. As these observations proceed from a person who, holding an important public situation, professes to write from a sense of *public duty*, and takes credit to himself for *practical knowledge* and *personal observation* of the subjects which he treats, I owe it to myself to meet a statement so likely to obtain belief, and to shew that whatever may have been your *observation*, your *knowledge* is none.

After representing that the Commissioners permit extraordinary fees to be received, *to which those contained in the regular list of fees, though very unreasonable, are by comparison nothing* (a statement utterly devoid of truth, or pretence of truth), you illustrate your position thus: “ There is an
 “ officer belonging to this court, whose profits are said to be enormous, without
 “ being subject to any risk whatever, and
 “ that is *the Clerk of the Court*; who, if
 “ eighteen thousand prisoners have been
 “ discharged, has received no less than ten
 “ shillings and sixpence for each of them,
 “ which will amount to nine thousand four
 “ hundred and fifty pounds in five years
 “ upon this fee alone, which is paid for
 “ nothing on earth but witnessing the petitions, and swearing the insolvents to
 “ their schedules.”

Not one allegation contained in the above sentence is true, excepting the process of multiplication.

It is due to the chief clerk, Mr. Massey, who will be supposed to be intended as "The Clerk of the Court," to state that he receives no share of any fee whatever at any time: his duties are paid altogether by salary.

I, who hold the office of Provisional Assignee, am the person alluded to in your observations: I am the person who visit the prisons, and whom you state to receive a fee of ten shillings and sixpence in each case, "for nothing on earth but witnessing the petitions, and swearing the insolvents to their schedules."

The fee which is paid to me is not ten shillings and sixpence, but five shillings; not for the duties, as stated by you, for I have nothing to do with swearing an insolvent to his schedule—a proceeding which must take place in open court at the hearing, and on account of which there is no fee paid—but I receive it for preparing the Provisional Assignment, which is made to me by every petitioner, and for attend-

ing at the prison, where I witness his signature to his petition and estate papers, and afterwards file them in the court.

This is the only fee paid by an insolvent during the process towards his discharge, in which I have any interest, or which comes into my department of the office; there is one, and only one other fee paid to the office of the court by him during that process, namely, two shillings and sixpence for preparing the warrant of attorney; but that is paid on a subsequent occasion, when the schedule has been filed, and the order for hearing bespoken; and if, after petitioning, an insolvent proceeds no farther, but goes out of custody, that fee is never paid at all. All other matters done in the court and the office of the court, in any way concerning a prisoner's discharge, are done without fee. All affidavits are sworn by me at the prisons, as well as by me and others at the office, gratuitously.*

* I do not here include the labours of the messengers as business done in the court and office: They are paid by a fee

There is one other payment made through the office, but not to the benefit of any person connected with it, namely, three shillings for the Gazette advertisement of the day appointed for the hearing; the whole of this sum is paid over to the printer of the Gazette, no charge being made by the office for preparing and sending the advertisement. It is for the benefit of insolvents that all advertisements of cases for the same day are thus consolidated in the office, and an arrangement made with the Gazette printer for charging only three shillings for each, which charge would be very much greater,* if each insolvent should send for himself to the Gazette his own particular advertisement. This payment is no fee, is not made to the officer who visits

for each notice delivered and the return thereof: 9*d.* within the district of the two-penny post, and 1*s.* beyond that to the distance of 10 miles from London; and 2*d.* for preparing and swearing the affidavit.

* The 86th section of the Act regulating the payment for advertisements in newspapers, is not considered to apply to the printer of the Gazette, nor so admitted by him.

the prison there or elsewhere, goes in full to the Gazette printer, and is made through this office to the clear advantage of the insolvent, and of no other person.

These things which I have stated you might have known, considering the intercourse which subsists between this court and the King's Bench Prison : these things you ought to have known before you put forth a pamphlet on the subject, and before you represented (as you do in p. 11), “ *the Clerk* “ *of the Court making a parade of going, attended by his Clerk, with a bag full of* “ *sixty or seventy schedules and petitions at a* “ *time to the King's Bench prison alone, for* “ *every one of which the fee of ten shillings* “ *and sixpence is claimed and paid.*”—These things and more might well have been ascertained, before this fee of ten shillings and sixpence, which has no existence, was represented as a part of the *enormous profits* of an individual officer.

Whether you judge well in maintaining

that the duties on which the fee (five shillings) is paid, as well as the duty of swearing an insolvent to his schedule, a proceeding which (as you might have known) necessarily takes place in open court, would be best performed by one of your turnkeys, I care not to inquire—I object not to your speculations, but to your assertions.

I can account for your ignorance as to the officer of the Insolvent Debtor's Court, who attends the prisons, and for your ignorance in supposing that the schedules are carried in my bag, and sworn to in the prison: I can account for this, because you have never availed yourself of an opportunity to observe what the duties are which are there performed by me. You are the only person at the head of any of the prisons, which I have visited now twice a week for seven years, whom *I have never once seen* on the occasion of those visits. In every other prison I am in the habit of seeing the superior, and I acknowledge the

assistance and accommodation which I have received from them ; but though your perpetual personal absence from the proceedings which you criticise, may account for your ignorance, it cannot vindicate your misrepresentation of them : nor does it well justify the claim to public attention which you put forth in the beginning of your pamphlet, on the ground of *practical knowledge* and *personal observation*.

The next part of your commentary, which (though you have still chosen the expression of “ *the Clerk of the Court* ”), is directed against myself, is as follows : “ There
 “ are also many minor expences attending
 “ the Insolvent Debtor’s Court, which may
 “ be brought before the public ; one of
 “ which is, the charge of taking down a
 “ subscribing witness to every sitting at
 “ Nisi Prius, and *every assize town through-*
 “ *out the kingdom*, to prove the execution
 “ of the provisional assignment ; the ex-
 “ pence of such a witness being one guinea

“ a day for loss of time, exclusive of tra-
 “ velling expences, *often* amounts to a
 “ great deal of money, whereas the assign-
 “ ment might just as well be proved by a
 “ certificate, under the hand of the Clerk
 “ of the Court, for which a sum of three
 “ shillings and four-pence would be ample
 “ remuneration: this profit generally goes
 “ to the Clerk of the Court, or some rela-
 “ tion or friend of his.”

You here speak of a grievance which
 did exist, but which, by your great *practical*
knowledge, you must know to exist no
 longer: it is true that assignees, who had
 occasion to prove their title on trials at the
 assizes, were sometimes, but certainly not
often in seven years, advised to subpœna
 some clerk in the office as a witness, and I
 also have been subpœnaed, and therefore
 obliged to attend in such cases, with much
 inconvenience to myself, as well as to the
 business of the office. Among the im-
 provements effected by the present insolvent

act is this : that a copy of the record of assignment on parchment, sealed, certified, &c. in manner pointed out by the nineteenth section of the act shall be of itself sufficient evidence of the assignment.

For this and many other improvements, which may not yet have come within the scope of your *practical observation*, the public are indebted to the exertions of the Commissioners, and I can safely state, that to this improvement in particular I earnestly gave my assistance. Your ignorance of it would not have claimed my notice, did I not find reason to correct you, in the manifest spirit of your concluding observation; viz. “ *this profit,*” (attending at assizes as witness,) “ *generally goes to the Clerk of the Court or some relation or friend of his.*”

One other of your commentaries on the law of insolvents is directed against me in these words, “ He has besides an emolument arising from being a kind of general re-

“ feree, for which duty he makes a charge
 “ of one guinea for every attendance, such
 “ attendance being long or short, frequent
 “ or few, according to his discretion.”

The insinuation here is, that, in cases where the Court in pursuance of the provisions of the act has referred to me the investigation of a prisoner's accounts and examination into the truth of his schedule for me to report thereon, I multiply the meetings unnecessarily for my own emolument. I will not say that you know this insinuation to be unfounded, because I really believe that you know nothing of the matter : but I assert it to be totally destitute of foundation ; the minimum which I give to such a meeting, where the business of it is not sooner dispatched, is two hours ; where it can occupy that time, I always allow it to do so ; and not unfrequently have I given three hours to one such meeting ; but, if the investigation has not been completed in one meeting, I have no *discretion*

to require another; it rests with the parties whether they will complete the inquiry or leave it imperfect. The fee allowed for every such meeting *and the report thereon* is one pound, being the same fee which was enacted by the 1st Geo. 4, c. 119, to be given to examiners in the country for the same duty. As your *practical knowledge* must have led you to the table of fees always exhibited in the office, and also printed in the many publications on the insolvent law, you might as well not have called it a guinea: accuracy is not to be neglected when one man is imputing misconduct to another.

I will here state that on this subject also, an improvement has been made at the suggestion of the commissioners, in the last act of parliament, for the advantage of insolvents, and to the diminution of my fees. By the act 1 Geo. IV., c. 119, any creditor opposing, might, at the hearing, *require* the reference above mentioned to

be made to an officer of the court. The necessary consequence of the reference is a delay of the judgment; and it was often required with the sole view of postponing the insolvent's liberation from prison. By the present act, 7 Geo. IV. c. 57, such reference is only to be made, *when it shall appear fit to the court, on application made by the creditor, and supported by oath or affidavit.* The consequence of this alteration has been a great diminution of the number of such references, and of my fees arising out of them.

I have thus observed, as I am entitled, upon those matters in your pamphlet which touch me and my character. I am not called on to dwell on the other parts of your commentary. I hope that I have exhibited sufficiently the extent and value of your *practical knowledge and personal observations*: but I cannot help thinking that in a third item of those merits to which you lay claim, in your first page, you may be

under some delusion—viz. in fancying that you write from a feeling of justice towards the Public.

The remedy for the evils of the present system of insolvent law which you propose in p. 16, is, “that a bill should pass, “enacting that no insolvents should be “allowed to apply to the court for relief “until they have been in prison for six “months.” This proposal, as it might tend to diminish the number of prisoners for debt, appears at first very disinterested on your part; but I find at the end of your pamphlet a point, started by you as being *of great importance*, relating to a provision in the present law, which you represent as an “*actual grievance*,” namely, the provision that an insolvent debtor must be confined within the walls, and not the rules of a prison during the proceedings for his discharge. Here is a great mitigation of your doctrine, which prescribed a minimum of six months’ imprisonment

as preliminary to the right of petitioning. This improvement so much desired by you, this probationary residence, which in your page 16 is called “being six months in prison,” appears, by the light thrown upon it in your last pages, to mean “being six months *in the rules* of a prison.” This is intelligible; in this, Mr. Jones, the Marshal of the King’s Bench is to be recognized: and let Mr. Jones speak out; let him advocate his point in plain terms; let him persevere in his remonstrances against this *actual grievance* (the provision above-mentioned), as interfering with his emoluments, from granting the rules of the prison; nor let him scruple to avow in his public pamphlet, a topic which he so well knows how to urge.

Do that, Sir, which every man has a right to do by fair means, seek your own advantages; but do not again satisfy your views on this subject by unjust attacks on the conduct and character of others;

and whatever shall be the value of your arguments, choose at least true facts for their foundation,

I am, Sir,

Yours, obediently,

HENRY DANCE.

THE END.

Pamphlets.

L154941

Vol. 905

DATE

ISSUED TO

L154941

Vol. 905

